

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

FREDDIE A. PARSONS,)
Petitioner,)
)
v.)
)
LUIS SPENCER,)
Respondent.)
)

CIVIL ACTION
NO. 05-11315-REK

**RESPONDENT'S MOTION TO DISMISS HABEAS CORPUS
PETITION FOR FAILURE TO EXHAUST STATE COURT REMEDIES**

The respondent, Luis Spencer, through his counsel, the Attorney General of Massachusetts, hereby moves this Court to dismiss the petition for writ of habeas corpus, or, in the alternative, order the petitioner to amend the petition to present only the claim which he has exhausted. In support of his motion, the respondent states that the petitioner has presented a mixed petition presenting one exhausted and one unexhausted claim. Because the petitioner has yet to provide the state's highest court with the first opportunity to pass on the merits of his unexhausted claim, this Court should dismiss the petition. *See* 28 U.S.C. §§ 2254(b)-(c); *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). The respondent reserves the right to submit a memorandum raising additional defenses, if necessary.

In support of this motion, the respondent relies upon his memorandum of law filed with this motion.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

/s/ Daniel I. Smulow
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Certificate of Compliance with Local Rule 7.1(A)(2)

I am unable to consult with the petitioner because he is presently incarcerated; however, in light of the relief sought by this motion, it is my belief that he would not assent to it.

/s/ Daniel I. Smulow

Certificate of Service

I hereby certify that a true copy of the above document was served on Freddie A. Parsons, W-70538, M.C.I. - Norfolk, P.O. Box 43, Two Clark Street, Norfolk, MA 02056-0043, by first class mail, postage prepaid, on July 22, 2005.

/s/ Daniel I. Smulow